IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 17482 of 2006(F)

OS.672/1991 of PRL.M.C.,KANNUR
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PETITIONER:

PAYYARATH ILLATH SHYLAJA,
D/O. JANAKI AMMA, BALIPATTAM,
KANNUR DISTRICT.

BY ADV. SRI.ABRAHAM GEORGE JACOB

RESPONDENTS:

T.V.JANAKI, D/O. APPA,
BALIPATTAM AMSOMD DESOM,
NEAR OLD TOLL BOOTH, VALAPATANAM P.O,
KANNUR DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the petition in EP No.179/03 in O.S.No.672/91 of Munsiff Court, Kannur.

Ext.P2:- True copy of the interim report filed by the Commissioner.

Ext.P3:- True copy of the report filed by the Commissioner 24.9.2005.

Ext.P4:- True copy of the affidavit and petition filed by the respondent for remitting back the report of the Commissioner.

Ext.P5:- True copy of the order dated 12.6.2006 passed by the court remitting the report to the Commissioner and directing him to inspect the property.

M.Sasidharan Nambiar,J.

W.P.(C) No.17482 of 2006

Dated, this the 5th day of January, 2007

JUDGMENT

Petitioner is the judgment debtor and respondent decree holder. A decree for injunction was passed against petitioner. Respondent filed E.P.179/03 under Order XXI Rule 35 of Code of Civil procedure alleging wilful violation of the decree for injunction. Petitioner disputed the identity and alleged violation of the decree. A Commission was appointed. The Commissioner originally submitted an interim report and thereafter a final report. Decree holder filed E.A.120/06 and E.A.134/06 applications to condone the delay and to remit the report back to the Commissioner. It was objected to by petitioner. Under Ext.P5 order, learned Munsiff allowed the applications and remitted the report back to the Commissioner which is challenged in this petition filed under

Article 227 of the Constitution of India.

2. Learned counsel appearing for petitioner and respondent were heard.

3. The argument of learned counsel appearing for petitioner was that neither the decree nor the agreement show the side measurements and respondent wanted the property to be identified with reference to side measurements furnished by the respondent, which is unauthorized and in such circumstance, the learned Munsiff should not have remitted the report to file a report after measuring the properties on the basis of the side measurements. Learned counsel appearing for the respondent submitted that petitioner wanted the decree schedule property to be identified with the assistance of the Surveyor as the Commissioner reported that side measurements are not available, court has only directed Commissioner to identify the property with reference to side measurements and that too with the assistance of

the village Assistant and in such circumstance, no interference is called for.

4. Under Ext.P5 order, learned Munsiff has not stated that the decree schedule property has to be fixed with reference to the side measurements furnished by the respondent. Ext.P5 order makes it clear that as the decree holder requested that property is to be identified with reference to the side measurements, Commissioner could be directed to file a report after identifying the property with reference to the side measurements also. That does not mean that the report will be accepted. By filing a report no prejudice will be caused to any of the parties. It is for the executing court to decide which exactly is the decree schedule property.

Writ Petition is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

Tpl/-